Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-882

LEONOR ALBERTI DE CANAS and
MIGUEL CANAS,

Petitioners,

v.

ANTHONY G. BICA and
JUAN SILVA,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

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TABLE OF CONTENTS

	Page
OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTES AND REGULATIONS INVOLVED	3
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	5
I. REVIEW BY THIS COURT IS NECESSARY TO RESOLVE IMPORTANT QUESTIONS OF FEDERAL PREEMPTION THAT AFFECT THE NATIONAL WELFARE	5
A. Introduction	5
B. The lower court incorrectly held that California Labor Code §2805 is pre-empted by federal immigration law	7
CONCLUSION	14
APPENDICES	1a
A. Memorandum Opinion of the Court of Appeal of the State of California, Second Appellate District	1a
B. Order of the Supreme Court of California denying petitioners' petition for hearing	1b
C. Relevant Statutes and Regulations	1c

TABLE OF AUTHORITIES

Cases:

California v. Zook, 336 U.S. 725 (1949)	9
Eastern Pipeline Co. v. Public Service Commission, 332 U.S. 506 (1948)	9
Florida Lime and Avocado Growers v. Paul, 373 U.S. 132 (1963)	9, 10, 11

Page

Free v. Bland, 369 U.S. 663 (1963) 9

Hines v. Davidowitz, 312 U.S. 52 (1941) 8, 11, 14

Kewanee Oil Co. v. Bicron Corp., ____ U.S. ____, 40 L.Ed. 2d 315 (1974) 2, 8, 9, 14

Nozewski Polish Style Meat Products v. Meskill, 376 F.Supp. 610 (D.Conn. 1974) 8

Retail Clerks International Assn. v. Schermerhorn, 375 U.S. 96 (1963) 9

Saxbe v. Bustos, 43 USLW 4017 (November 26, 1974) 15

Seagram & Sons, Inc. v. Hostetter, 384 U.S. 35 (1966) 11

Statutes and Regulations:

California Labor Code §2805 ..... 2, 3, 4, 5, 7

California Administrative Code, Title 8, Part 1, Chapter 8, Article 1 §§16209.6 14

Connecticut General Statutes § 31-51k 8

Kansas Statutes Annotated § 21-4409 8

7 U.S.C. § 2044(b)(6) 13

8 U.S.C. § 1101(a)(15)(H) 10, 14

8 U.S.C. § 1182(a)(14) 11

8 U.S.C. § 1324(a)(4) 13

20 CFR § 602.10(e)(5) 12, 13

45 CFR § 233.50 13

45 CFR § 248.50 13

Articles:

Greene, *Immigration Law and Rural Poverty – The Problems of the Illegal Entrant*, 1969 Duke L.J. 475 5

Note, *State Regulation of the Employment of Illegal Aliens: A Constitutional Approach*, So. Calif. L.R. 567 (1973) 5

IN THE

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No.

LEONOR ALBERTI DE CANAS and
MIGUEL CANAS,

Petitioners,

v.

ANTHONY G. BICA and
JUAN SILVA,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

Petitioners pray that a writ of certiorari issue to review the judgment herein of the California Court of Appeal, Second Appellate District entered in the above-entitled case on July 26, 1974, petition for hearing to the Supreme Court of California denied on October 24, 1974.

OPINIONS BELOW

The opinion of the California Court of Appeal, Second Appellate District is set out in Appendix A, and is reported at 115 Cal. Rptr. 444 (1974). The order of the Supreme Court of California denying petitioners' petition for hearing is set out in Appendix B.

JURISDICTION

The judgment of the Court of Appeal was entered on July 26, 1974, and a petition for hearing was denied by the Supreme Court of California on October 24, 1974. This petition for writ of certiorari was filed within 90 days of the latter date. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

1. Did the lower court fail to apply the principles recently announced by this Court in *Kewanee Oil Company v. Bicron Corp.*, ____ U.S. ____, 40 L.Ed.2d 315 (1974) by invalidating state legislation which touches on, but does not conflict with, federal law?

2. Is California Labor Code § 2805, enacted to protect California citizens and lawful resident aliens from unemployment caused by competition from illegal aliens, constitutionally valid as a measure not in conflict with federal immigration law?

STATUTES AND REGULATIONS INVOLVED

These statutes and regulations are reproduced in Appendix C:

1. California Labor Code § 2805.
2. California Administrative Code, Title 8, Part 1, Chapter 8, Article 1 § § 16209 through 16209.6.
3. Connecticut General Statutes § 31-51k.
4. Kansas Statutes Annotated § 21-4409.
5. 7 U.S.C. § 2044(b)(6).
6. 8 U.S.C. § 1101(a)(15)(H).
7. 8 U.S.C. § 1182(a)(14).
8. 8 U.S.C. § 1324(a)(4).
9. 20 CFR § 602.10(e)(5).
10. 45 CFR § 233.50.
11. 45 CFR § 248.50.

STATEMENT OF THE CASE

This litigation began when petitioners, migrant farmworkers, commenced an action pursuant to California Labor Code § 2805[1] in the Superior Court for

[1] California Labor Code § 2805 provides:

"(a) No employer shall knowingly employ an alien who is not entitled to lawful residence in the United States if such employment would have an adverse effect on lawful resident workers.

"(b) A person found guilty of violation of subdivision (a) is punishable by a fine of not less than two hundred dollars ($200.00) nor more than five hundred dollars ($500.00) for each offense.

"(c) The foregoing provisions shall not be a bar to civil action against the employer based upon violation of subdivision (a)."

the County of Santa Barbara on October 24, 1972. Generally, the complaint alleged that petitioners had performed satisfactory employment for respondents as farmworkers from June 5, 1972 through September 28, 1972; that petitioners were lawful residents and lawful workers at all times; that on or about September 28, 1972 and at all times thereafter respondents refused employment to petitioners on the ground that respondents had a surplus of labor; that part of said labor supply consisted of aliens illegally present in this country; that respondents are open and notorious employers of illegal aliens and encouraged illegal aliens to compete with local workers for jobs in order to depress local wages and working conditions; and that respondents' practices constituted the knowing employment of aliens not legally admitted to lawful residence in the United States which has an adverse effect on lawful resident workers in violation of California Labor Code § 2805(a) and (c). Petitioners sought their reinstatement to employment by respondents and a permanent injunction against respondents' willful employment of illegal aliens.

On February 14, 1973, the trial court declared California Labor Code § 2805 unconstitutional for the reason that the challenged statute was preempted by federal immigration law. Petitioners appealed this ruling to the California Court of Appeal, Second Appellate District, and on July 26, 1974, the appellate court affirmed the trial court's decision.[2] Petitioners filed a petition for hearing to the Supreme Court of California, and on October 24, 1974 said petition was denied. This

[2] 115 Cal. Rptr. 444 (1974)

timely petition for writ of certiorari seeks review from the Court of Appeal's decision invalidating California Labor Code § 2805 as preempted by federal immigration law.

REASONS FOR GRANTING THE WRIT

I.

REVIEW BY THIS COURT IS NECESSARY TO RESOLVE IMPORTANT QUESTIONS OF FEDERAL PREEMPTION LAW THAT AFFECT THE NATIONAL WELFARE.

A. Introduction

At issue in this action is the constitutionality of a statute of great public importance, a statute fashioned to protect citizens and lawfully resident alien workers from unfair competition by illegal aliens in California. That the problem is of great public importance cannot be doubted.[3] For example, the United States Border Patrol in Southern California has averaged approximately 11,000 apprehensions of illegal aliens each month. The Border Patrol annually apprehends more than 600,000 illegal aliens in the United States, approximately 95 percent are of Mexican national origin. (*Washington Post*, December 9, 1973, p. 16) The U.S. Attorney General recently stated that illegal aliens now hold at least a million jobs in the United States

[3] See generally, Note, *State Regulation of the Employment of Illegal Aliens: A Constitutional Approach*, 46 So.Calif.L.R. 567 (1973), See also, Greene, *Immigration Law and Rural Poverty – the Problems of the Illegal Entrant*, 1969 Duke L.J. 475.

and that the Immigration and Naturalization Service can no longer cope with the flow.

The problems of illegal aliens is particularly acute in California where the employment of illegals is virtually unchecked producing drastic effects both on low income and minority residents who are displaced, and on the local economies which suffer a "wage drain" into Mexico.[4]

A report by the Committee on Labor and Public Welfare of the United States Senate articulates the problem:

> The problems created by the commuter immigrant and illegal entrant are manifest. The Mexican aliens, as a group, are a readily available, low-wage work force which undermines the standards American workers generally enjoy throughout the rest of the country. More importantly, the normal play of free enterprise principles is subverted and prevented from operating to develop standards along the border commensurate with the American standard. This prognosis is made distressingly clear by looking at the poor working and living conditions that are rampant in areas of our country along the Mexican border. So long as Mexican aliens are allowed indiscriminately to work in the American economy, and take their wages back to the low-cost Mexican economy, the growth of the American standards will continue to be stultified. (The Migratory Farm Labor Problem in the United States, Report No. 91-83, 1969).

[4] I.N.S. estimates there are currently 8 million illegal aliens in the country. Another report estimates illegals cause a wage loss to American citizens of $10 billion annually. (*Washington Star-News*, January 11, 1975, p. A-8).

The United States Department of Labor has summarized how persons illegally present in this county (1) take jobs which would normally be filled by American citizens; (2) depress the wages and impair the working conditions of American citizens; (3) increase the burden of American taxpayers through added welfare costs; (4) reduce the effectiveness of employee organizations; (5) secure jobs, services, and resources directly and indirectly from many federal and state programs, thus diverting scarce resources from American citizens; and (6) constitute for employers an unskilled group rich for exploitation–aggressive, enterprising workers with low-wage demands. (U.S. Department of Labor, Manpower Administration, Statement before the House Subcommittee on Immigration and Nationality, June 19, 1971.)

Thus, without an adjudication of the constitutionality of California Labor Code § 2805, a continuing employment of illegal aliens will render jobless thousands of lawful workers in the state; their families will be reduced to penury and possibly forced onto public assistance.

B. The lower court incorrectly held that California Labor Code § 2805 is preempted by federal immigration law.

Labor Code § 2805 was adopted by the California Legislature in 1971 because of a growing concern with the massive numbers of illegal aliens residing and working in California and the resulting displacement of citizens and lawful resident aliens who were forced into

unemployment and onto the welfare rolls.[5] The crux of the ruling in the California Court of Appeal is that Section 2805 of the California Labor Code touches on the area of federal immigration law and therefore is invalid *per se*, even though both state and federal law may serve the common purpose of protecting lawful residents from job displacement by illegal alien workers. In so holding, the state court failed to apply the principles set forth by this Court in *Kewanee Oil Co. v. Bicron Corp.*, ____ U.S. ____, 40 L.Ed. 2d 315 (1974): that while federal legislation manifesting a Congressional intent to occupy a field exclusively precludes a state from legislating directly in that same field, nonetheless, state legislation in one area which coincides with federal legislation in another area remains valid absent proof of actual conflict between the two.

This Court in *Kewanee Oil Company, supra*, upheld a state trade secret law overlapping a federal law under the Patent Clause of Article I, section 8. This Court upheld the state law in the face of challenges that the entire area was preempted by Congress' exclusive power to regulate patents, and that actual conflict existed between state and federal law. For example, the state law provided for trade secret protection in perpetuity to patentable inventions which were protectable for only 17 years under a federal patent. This Court relying on *Hines v. Davidowitz*, 312 U.S. 52 (1941) instead

[5]Other states have expressed similar concerns by enacting legislation prohibiting the knowing employment of illegal aliens: Kan. S.A. § 21-4409; Conn. Gen. Stats. § 31-51k. However, the Connecticut statute appears to have been declared unconstitutional on federal preemption grounds in *Nozewski Polish Style Meat Products v. Meskill*, 376 F.Supp. 610 (D. Conn. 1974).

looked to the more fundamental question of conflict between the basic purposes of the state and federal laws:

> The question of whether the trade secret law of Ohio is void under the Supremacy Clause involves a consideration of whether that law *stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. . . . supra* at 324. (Emphasis added)

Disapproving the automatic "coincidence means invalidity" theory, this Court repeatedly has warned that its use would mean "setting aside great numbers of state statutes to satisfy a Congressional purpose which would be only the product of this Court's imagination." *California v. Zook*, 336 U.S. 725 (1949) (state regulation of travel bureaus not preempted by federal laws regulating interstate commerce); see also *Panhandle Eastern Pipeline Company v. Public Service Commission*, 332 U.S. 506, 523-524 (1948) (dual rate regulations by state and federal governments upheld); *Free v. Bland*, 369 U.S. 663, 666 (1962) (upholding state community property rights under Treasury regulations affecting savings bonds); *Florida Lime and Avocado Growers v. Paul*, 373 U.S. 132, 141 (1963) (state law defining avocado maturity not preempted by federal commerce regulations); and *Retail Clerks Internat'l. Assn. v. Schermerhorn*, 375 U.S. 96, 105 (1963) (upholding state labor law not preempted by federal labor law).

The question at issue here, therefore, is whether there is "evidence of a congressional design to preempt the field", or, in the absence of such evidence, whether there is "such actual conflict between the two schemes

of regulations that both cannot stand in the same area". *Florida Lime and Avocado Growers, Inc. v. Paul, supra* at 141.

Nothing whatsoever in the language or history underlying federal immigration legislation indicates a Congressional intent to preempt the field to the extent of prohibiting the states from adopting labor or general welfare legislation coincidental with federal immigration law. The test is whether there exists an unresolvable conflict between federal immigration laws and § 2805. An analysis of the two legislative schemes shows not only an absence of conflict but harmony of purpose.

California Labor Code section 2805, far from conflicting with federal law, is consistent with and reinforces the basic purpose of federal legislation. Congress enacted a comprehensive law governing immigration in 1965 which repealed origin-quota provisions and substituted a system of "preferential admissions based upon the existence of a close family relationship with United States citizens or permanent resident aliens, and upon the *advantage to the United States of the special talents and skills of the immigrant*". (Emphasis added) 1965 U.S. Code Cong. & Admin. News, at 3329. A principal purpose of the new scheme was the strengthening of "safeguards to protect the American economy from job competition and from adverse working standards as a consequence of immigrant workers entering the labor market. . . ." *Id.*

Under the new regulatory system, the United States authorizes the importation of temporary workers from other countries *only* "if unemployed persons capable of performing such service or labor cannot be found in this country". 8 U.S.C. § 1101(a)(15)(H)(ii). Applicants

for permanent admission may be authorized only if the Secretary of Labor certifies that:

> (A) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place to which the alien is destined to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed . . . 8 U.S.C. § 1182(a)(14).

In the absence of congressional intent to preempt state labor legislation coincidental with immigration legislation specific conflict between the state and federal laws must be shown. Stated in a different manner, preemption occurs only if "the state regulation 'stands as an obstacle to the accomplishment and execution of the full purposes and objections of Congress.' " *Florida Lime and Avocado Growers, Inc. v. Paul, supra* at 141; *Hines v. Davidowitz, supra* at 67. In applying this second test, the Court has indicated that conflicts between state and federal regulations should not be sought where none clearly exists. *Seagram & Sons, Inc. v. Hostetter,* 384 U.S. 35, 45 (1966). Congressional intent relevant to this case at bar has been to encourage and incorporate the involvement of states in the area of entry of immigrants and temporary workers:

> The Department of Labor should have no difficulty in adapting to this new [certification] procedure, inasmuch as the Department, through its Bureau of Employment Security and *affiliated state employment service agencies, presently deter-*

mines availability of domestic workers and the standards of working conditions. [Emphasis added.] 1965 U.S. Code Cong. & Admin. News, Sen. Rept. No. 748, at 3334.

Regulations adopted by the Department of Labor further illustrate the harmony of § 2805 with federal immigration law. Regulations compiled in 20 CFR § 602, for example provide precise guidelines to employers as to when the employment of a foreign worker would have an adverse effect on domestic workers. Under the regulations, temporary alien workers may be imported only after the Manpower Administrator finds:

> That the employment of such workers will not *adversely affect* the wages and working conditions of domestic workers similarly employed; and 2) that reasonable efforts have been and will continue to be made by the employment service and the employers to obtain domestic workers at wage rates and conditions of employment no less favorable than those set forth in the regulations in this part. [Emphasis added] 20 CFR § 602.10(e)(1) and (2).

Such certification should be denied if the employer "has failed to abide by any applicable state or local labor, health or housing laws". 20 CFR § 602.10(e)(3). Similarly, a denial should occur:

> Where the Immigration and Naturalization Service has notified the Secretary of Labor that the employer has *had in his employ* any *foreign worker* who was not lawfully in the United States, *unless* the employer demonstrates that he *did not know*, had no reasonable grounds to suspect, or could not by *reasonable inquiry have* ascertained

> that the alien worker was not lawfully in the United States. . . . [Emphasis added] 20 CFR § 602.10(e)(5).

Notably, petitioners could assert the same cause of action and seek the same relief under federal law as they sought under California state law, under amendments to the federal Farm Labor Contractor Registration Act, 7 U.S.C. § 2041 et seq. (P.L. No. 93-518, December 7, 1974). Enacted subsequent to the decision in the California Court of Appeal below, the Act prohibits farm labor contractors such as respondent Bica from "recruiting, employing, or utilizing, with knowledge, the services of any person, who is an alien not lawfully admitted for permanent residence, or who has not been authorized by the Attorney General to accept employment." 7 U.S.C. § 2044(b)(6). Moreover, the amendments enable "any person claiming to be aggrieved" by a violation of any part of the act to seek legal or equitable relief in federal district court. Similar prohibitions apply to eligibility under the categorical public assistance programs under the Social Security Act, 45 C.F.R. § § 233.50 and 248.50.

Nor does conflict arise from the Immigration and Nationality Act, 8 U.S.C. § 1324(a)(4), which provides that employment by itself does not constitute the crime of harboring an alien. First, federal policy underlying the Act is not to encourage the hiring of illegal aliens, but rather "to protect the American economy from job competition and from adverse working standards as a consequence of immigrant workers entering the labor market." Moreover, the Act authorizes the importation of temporary workers from other countries *only* "if unemployed persons capable of performing such service

or labor cannot be found in this country". 8 U.S.C. § 1101(a)(15)(H)(ii).[6] The lack of identical remedies in the two statutes does not mean a clash of their objectives. See *Kewanee Oil Co. v. Bicron Corp., supra.*

CONCLUSION

The lower court failed to apply the proper standards under *Kewanee Oil v. Bicron Corp., supra* and *Hines v. Davidowitz, supra* as the challenged statute poses no burden or "obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Given the present state of unemployment and the impact of illegal aliens on the nation's economy, review by this Court is necessary. Until Congress has expressed its intention to preempt a state's ability to legislate in this area "it is fit that the

[6]It should be noted that regulations issued by the California State Labor Commissioner totally incorporate non-immigrant aliens and any other lawfully admitted persons within the definition of "lawful resident" under § 2805. Title I C.A.C., Pt. 1, Ch.8, Art. 1, § 16209.

judiciary recuse itself." *Saxbe v. Bustos,* 43 USLW 4017, 4021 (November 26, 1974).

For the reasons stated above, petitioners pray this Court grant a writ of certiorari to review the judgment and opinion of the Court of Appeal.

Respectfully submitted,

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APPENDIX A

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION TWO

LEONOR ALBERTI DE CANAS and MIGUEL CANAS,
Plaintiffs and Appellants.

vs.

ANTHONY G. BICA, JUAN SILVA, DOES I through X, Inclusive,
Defendants and Respondents.

2D CIVIL NO. 42739
Sup. Ct. No. SM 11789

COURT OF APPEAL – SECOND DIST.
FILED
JUL 26 1974
CLAY ROBBINS, Jr. *Clerk*
(stamp)

APPEAL from a judgment of the Superior Court of Santa Barbara County, Marion A. Smith, Judge. Affirmed.

California Rural Legal Assistance, Inc., William D. Farber, Robert Johnstone, Cynthia Mertens, Michael Stern; Migrant Legal Action Program, Inc., Burton D. Fretz, Howard Scher, Robert S. Catz, for Plaintiffs and Appellants.

Robert L. Trapp, Jr., William S. Marrs, for Defendants and Respondents.

Plaintiffs appeal from a judgment of dismissal entered upon the sustaining of a demurrer without leave to amend their complaint for damages and injunctive relief.

The complaint in essence alleges that plaintiffs are farm workers who have been discharged from employment and have not been rehired because defendants, farm labor contractors, contend that they have a sufficient labor supply. According to the allegations of the complaint that labor supply consists of aliens who are illegally within this country and defendants knowingly hire such illegal aliens in the stead of qualified lawful residents of the United States.

Plaintiffs' attempt to obtain redress is bottomed on Labor Code section 2805, which provides criminal penalties for persons who "knowingly employ an alien who is not entitled to lawful residence in the United States if such employment would have an adverse effect on lawful resident workers." According to plaintiffs a violation of this statute constitutes an act of unfair competition which may be enjoined pursuant to Civil Code section 3369.[1] The claim for damages is premised

[1] Civil Code section 3369 provides in part:

"(1) Neither specific nor preventive relief can be granted to enforce a penalty of forfeiture in any case, nor to enforce a penal law, except in a case of nuisance or unfair competition.

"(2) Any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction.

"(3) As used in this section, unfair competition shall mean and include unlawful, unfair or fraudulent practice . . . ."

on tortious interference with plaintiffs' right to pursue a livelihood.

The trial court's ruling on the demurrer was squarely based on its holding that Labor Code section 2805 is unconstitutional. Both sides agree that the constitutionality of that section is controlling of the issues presented.

Plaintiffs' claim to equitable relief was treated and disposed of in *Diaz v. Kay-Dix Ranch*, 9 Cal.App.3d 588, where the Court of Appeal, after a lengthy discourse on the conflicting policy considerations, refused to enjoin the hiring of illegal aliens and concluded that the problem was one that required the attention of the Federal government. Of course, *Diaz* was decided in 1970, prior to the enactment of Labor Code section 2805. The decision there rested on the general balancing of equitable considerations.

The question presented here is whether the result of *Diaz* is now to be rejected because the state Legislature has specifically legislated on the subject. The answer to that question in turn rests upon whether the State of California, within the framework of our system of Federalism, can properly legislate on a subject which admittedly is one of primary Federal concern. (*Hines v. Davidowitz*, 312 U.S. 52.) We think that California cannot so legislate.

Labor Code section 1850 which purported to prohibit the hiring of aliens on public works in California, was struck down by the California Supreme Court in *Purdy & Fitzpatrick v. State of California*, 71 Cal.2d 566, as being an interference with the regulatory scheme enacted by Congress to control immigration. True, section 1850 addressed itself to all

aliens whether legally or illegally within the nation's borders, while section 2805 deals only with illegal aliens. Such distinction, however, is not such as to detract from the force of *Purdy & Fitzpatrick's* strong language to the effect that in the area of immigration and naturalization, congressional power is exclusive.

The Federal Congress has the specific delegated power to regulate foreign commerce, make treaties and establish rules for naturalization and it has as an incident of national sovereignty the implied power to control the conditions for admissionof foreign nationals into the country. (*Ekiu v. United States*, 142 U.S. 651.) No area of governmental activity is more uniquely suited to Federal regulation than the control of immigration.

Pursuant to its authority, the Congress of the United States has enacted a comprehensive scheme for controlling immigration and naturalization which includes regulation of employment of aliens. (8 U.S.C., §§ 1101 et seq.) At this writing,[2] however, the Congress has not imposed upon private employers the burden of determining, in terms of the immigration laws, the status of prospective employees.

Has Congress by its inaction in this latter regard intended that such augmentation of its regulations be open to adoption by the several states? We are of the opinion that the answer is plainly "No." To the contrary, it would appear that until now Congress has

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[2] There is now pending in the United States Congress, H.R. 982 which would amend 8 U.S.C., section 1324(a) to provide a penalty for knowingly employing an alien not lawfully admitted to the United States.

specifically and intentionally declined to add sanctions to employers ot its control mechanism.

The controlling principles are set forth in United States Supreme Court decisions involving labor management disputes in which the National Labor Relations Board had declined to assert jurisdiction but had also not ceded jurisdiction to the states. In these cases it was argued that the inaction of the National Labor Relations Board created a "no-man's-land" on which the states might assert jurisdiction.

In *Guss v. Utah Labor Board*, 353 U.S. 1, it was stated at page 11, "Since Congress' power in the area of commerce among the States is plenary, its judgment must be respected whatever policy objections there may be to creation of a no-man's-land."

California's efforts to provide injunctive relief and damages to an employer who was found to have suffered from an unfair labor practice over which the National Labor Relations Board had refused to assert jurisdiction were set at naught in two opinions by the United States Supreme Court rendered in the same action. (*San Diego Unions v. Garmon*, 353 U.S. 26, and 359 U.S. 236.) The first case disposed of the injunctive relief and the second disposed of damages for tortious conduct.

In the latter case it was stated at pages 244, 256 and 247: "To leave the States free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law.... It follows that the failure of the Board to define the legal significance under the Act of a particular activity does not give the States the power to

act.... The governing consideration is that to allow the States to control activities that are potentially subject to federal regulation involves too great a danger of conflict with national labor policy.... Even the States' salutary effort to redress private wrongs or grant compensation for past harm cannot be exerted to regulate activities that are potentially subject to the exclusive federal regulatory scheme.... In fact, since remedies form an ingredient of any integrated scheme of regulation, to allow the State to grant a remedy here which has been withheld from the National Labor Relations Board only accentuates the danger of conflict."

These holdings are clear authority for the proposition that Labor Code section 2805 either in its provision for criminal penalties or in its application in providing a basis for injunctive relief or damages is in conflict with the national law and policy. These are remedies which the Congress has withheld from the executive branch of the Federal government and thus may not be utilized by the states.

In *Dolores Canning Co., Inc. v. George W. Milias*, et al., 2d Civil No. 41729, ____ Cal.App.3d ____, filed July 17, 1974, Division V of this court, also concluded that Labor Code section 2805 is unconstitutional.

The judgment is affirmed.

COMPTON, J.

We concur:

FLEMING, Acting P.J.
BEACH, J.

APPENDIX B

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

OCT 24 1974

I have this day filed Order

HEARING DENIED

In re: 2 Civ. *No.* 42739

De Canas

vs.

Bica

Respectfully,

G. E. BISHEL
Clerk

21414-877 3-74 3M OSP

APPENDIX C

STATUTES

1. California Labor Code § 2805:

"(a) No employer shall knowingly employ an alien who is not entitled to lawful residence in the United States if such employment would have an adverse effect on lawful resident workers.

"(b) A person found guilty of violation of subdivision (a) is punishable by a fine of not less than two hundred dollars ($200.00) nor more than five hundred dollars ($500.00) for each offense.

"(c) The foregoing provisions shall not be a bar to civil action against the employer based upon violation of subdivision (a)."

2. California Administrative Code, Title 8, part 1, chapter 8, article 1 § § 16209 through 16209.6:

16209. DEFINITION OF ALIEN ENTITLED TO LAWFUL RESIDENCE.

An alien entitled to lawful residence shall mean any non-citizen of the United States who is in possession of a Form I-151, Alien Registration Receipt Card, or any other document issued by the United States Immigration and Naturalization Service which authorized him to work.

16209.1 INQUIRY OF APPLICANT FOR EMPLOYMENT.

In ascertaining whether an applicant for employment is not entitled to lawful residence in the United States, an employer shall, contemporaneous with the hiring, make inquiry of such applicant as to whether he is a citizen or an alien.

16209.2 INQUIRY OF EMPLOYEE.

In ascertaining whether an employee is not entitled to lawful residence in the United States, an employer shall make inquiry of such employee as to whether he is a citizen or an alien.

16209.3 APPLICANT OR EMPLOYEE CITIZEN.

If the applicant for employment or employee claims to be a citizen, he may be employed or continued in the employ of the employer upon signing a declaration under penalty of perjury that he is a citizen of the United States. An employer who knowingly employs an alien not entitled to lawful residence shall not be exonerated from prosecution for violation of Labor Code Section 2805 notwithstanding his having obtained a signed declaration of citizenship from the alien.

16209.4 APPLICANT ALIEN – REQUIREMENT OF PROOF.

If the applicant acknowledges that he is an alien, he shall be requested to produce a document which shows that the applicant is entitled to lawful residence in the United States. A document such as specified in Section 16209 shall be sufficient proof of lawful resident status. The applicant shall furnish such documentation within three days from the date of employment. In the event that he fails to furnish such documentation and

employment is nevertheless continued and he is found to be an unlawful resident, the employer shall be presumed to have had knowledge of the employee's unlawful resident status.

16209.5 EMPLOYEE ALIEN – REQUIREMENT OF PROOF.

If the employee acknowledges that he is an alien, he shall be requested to produce a document which shows that he is entitled to reside in the United States. A document such as specified in Section 16209 shall be sufficient proof of lawful resident status. The employee shall furnish such documentation within three days. In the event that he fails to furnish such documentation and employment is nevertheless continued and he is found to be an unlawful resident, the employer shall be presumed to have had knowledge of the employee's unlawful resident status.

16209.6 DEFINITION OF ADVERSE EFFECT

Employment of an alien not entitled to lawful residence under any of the following circumstances shall be deemed to have an adverse effect on lawful resident workers:

a. Employment in any category of employment not enumerated on Schedule A in Labor Department Regulations 29 CFR §60.6. Schedule A may be obtained from the Manpower Administration, U.S. Department of Labor, Washington, D.C.

b. Payment by an employer to such employee of less than the federal or state minimum wage, whichever is higher.

3. Connecticut Gen. Stats. §31-51k.:

§31-51k. Employment of alien not entitled to residence

(a) No employer shall knowingly employ an alien who is not entitled to lawful residence in the United States.

(b) Violation of the provisions of this section shall be punishable by a fine of not less than two hundred nor more than five hundred dollars and, for any subsequent offense, by the penalty for a class A misdemeanor.

(c) The labor commissioner shall, on or before October 1, 1972, promulgate regulations specifying the procedure to be followed by each employer to insure compliance with the provisions of this section.
(1972, P.A. 275, §§1 to 3, eff. May 24, 1972.)

4. Kansas Statutes Annotated §21-4409:

21-4409. Knowingly employing an alien illegally within the territory of the United States.

(a) Knowingly employing an alien illegally within the territory of the United States is the employment of such alien within the state of Kansas by an employer who knows such person to be illegally within the territory of the United States.

(b) Knowingly employing an alien illegally within the territory of the United States is a class C misdemeanor. [L. 1973, ch. 140, §1; July 1.]

5. 7 U.S.C. §2044(b)(6):

Refusal to Issue certificate suspension; revocation; refusal to renew

(b) Upon notice and hearing in accordance with regulations prescribed by him, the Secretary may refuse to issue, and may suspend, revoke, or refuse to renew a certificate of registration to any farm labor contractor if he finds that such contractor–

(6) has recruited, employed, or utilized, with knowledge, the services of any person, who is an alien not lawfully admitted for permanent residence, or who has not been authorized by the Attorney General to accept employment;

6. 8 U.S.C. §1101(a)(15)(H):

15) The term "immigrant" means every alien except an alien who within one of the following classes of nonimmigrant aliens–

(H) an alien having a residence in a foreign country which he has no intention of abandoning (i) who is of distinguished merit and ability and who is coming temporarily to the United States to perform services of an exceptional nature requiring such merit and ability; or (ii) who is coming temporarily to the United States to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country; or (iii) who is coming temporarily to the United States as a trainee; and the aliens spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him.

7. 8 U.S.C. §1182(a)(14):

§1182. Excludable aliens–General Classes

(a) Except as otherwise provided in this chapter, the following classes of aliens shall be ineligible to receive

visas and shall be excluded from admission into the United States:

(14) Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (A) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place to which the alien is destined to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply to special immigrants defined in section 1101(a) (27) (A) of this title (other than the parents, spouses, or children of United States citizens or of aliens lawfully admitted to the United States for permanent residence), to preference immigrant aliens described in sections 1153(a) (3) and 1153(a) (6) of this title, and to nonpreference immigrant aliens described in section 1153(a) (8) of this title;

8. 8 U.S.C. §1324(a)(4):

§1324. Bringing in and harboring certain aliens; persons liable; authority to arrest

(a) Any person, including the owner, operator, pilot, master, commanding officer, agent, or consignee of any means of transportation who–

(4) Willfully or knowingly encourages or induces, or attempts to encourage or induce, either directly or indirectly, the entry into the United States of–
any alien, including an alien crewman, not duly admitted

by an immigration officer or not lawfully entitled to enter or reside within the United States under the terms of this chapter or any other law relating to the immigration or expulsion of aliens, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $2,000 or by imprisonment for a term not exceeding five years or both, ...

9. 20 C.F.R. § 602.10(e)(5):
Certification and Use of Temporary Foreign Labor for Agricultural, and Logging Employment
§602.10 The certification processes.

(e) Certifications will be denied in whole or in part if the findings set forth in paragraph (d) of this section cannot be made or:

(5) Where the Immigration and Naturalization Service has notified the Secretary of Labor that the employer has had in his employ any foreign worker who was not lawfully in the United States, unless the employer demonstrates that he did not know, had no reasonable grounds to suspect, or could not by reasonable inquiry have ascertained that the alien worker was not lawfully in the United States.

10. 45 C.F.R. §233.50:
§233.50 Citizenship.
Conditions for plan approval:

(a) A State plan under title, I, X, XIV, XVI of the Social Security Act may not exclude an otherwise eligible citizen of the United States, regardless of how (by birth or by naturalization), or when, citizenship was obtained.

(b) A state plan may include all persons without regard to citizenship status. Where there is an eligibility

requirement applicable to noncitizens, a State plan may, as an alternative to excluding all noncitizens, provide for qualifying noncitizens, otherwise eligible, who have resided in the United States for a specified number of years.

11. 45 C.F.R. §248.50:

§248.50 Citizenship.

Conditions for plan approval:

(a) A state plan under title XIX of the Social Security Act may not exclude an otherwise eligible citizen of the United States, regardless of how (by birth or by naturalization), or when, citizenship was obtained.

(b) A State plan which includes the medically needy must include all otherwise eligible individuals, regardless of citizenship status, unless all of the State's approved financial assistance plans require citizenship as a condition of eligibility.

(c) A State plan may include persons without regard to citizenship status, even though all of the State's financial assistance plans contain such a requirement.